

1961 Present: T. S. Fernando, J., and Sinnetamby, J.

K. P. KALIAPPA PILLAI, Petitioner, and M. S. M. CASSIM and another, Respondents

*S. C. 288 of 1960—In the matter of an Application for Conditional Leave to appeal to the Privy Council in S. C. 679/D. C. Colombo, 36600/M*

*Privy Council—Monthly tenancy under Rent Restriction Act—Order of ejection entered by Court against tenant—Right of tenant to appeal to Privy Council—“Matter in dispute”—Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rule 1 (a).*

Where, in a rent and ejection action in respect of premises subject to the operation of the Rent Restriction Act, the tenant, whose ejection was ordered, sought to appeal to the Privy Council as of right under Rule 1 (a) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance—

*Held*, that, in such a case, it is the value of the property, not the value of the claim or question, which is the determining factor.

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

*H. V. Perera, Q.C.*, with *S. Sharvananda*, for the petitioner.

*H. A. Koattegoda*, with *S. Mohamed*, for the 1st respondent.

*Cur. adv. vult.*

July 24, 1961. T. S. FERNANDO, J.—

This is an application for conditional leave to appeal to Her Majesty in Council by a tenant in a rent and ejection action who has been sued successfully by his landlord and whose ejection has been ordered by a judgment of the Supreme Court delivered on 3rd June 1960.

It is common ground that the premises from which the petitioner has been ordered to be ejected are subject to the operation of the Rent Restriction Act, 1948, and that the monthly rental thereof is Rs. 210/83.

The application is being made on the basis that an appeal lies as of right in terms of Rule 1 (a) of the Rules in the Schedule to The Appeals (Privy Council) Ordinance (Cap. 85). It is being resisted by the landlord

who contends that the matter in dispute on the appeal is not of the value of five thousand rupees and that the appeal does not involve directly or indirectly some claim or question to or respecting property of that value.

In support of the application reliance is placed on two decisions of the Privy Council. The first of these is the case of *Lipshitz v. Valero*<sup>1</sup> where the Judicial Committee had to consider the interpretation of Article 3 (a) of the Palestine (Appeal to Privy Council) Order in Council, 1924, which is on all material points similar to Rule 1 of our Schedule Rules, except that the specified value there is £500. The respondent in that case claimed an order for possession of land which he had leased to the appellant on a monthly tenancy at a rent of £13.500 a month, and on which the appellant had erected a building at a cost of £450. The appellant pleaded, *inter alia*, that the action was contrary to the provisions of the Rent Restrictions (Business Premises) Ordinance of Palestine. The respondent being successful in the Supreme Court, the appellant applied for and obtained from the Supreme Court leave to appeal to the Privy Council, the Supreme Court holding that the tenancy right amounted in value to at least £50 and the value of the building to £450. On an objection by the respondent that the Privy Council had no jurisdiction to entertain the appeal on the grounds that all that was in dispute was the appellant's right to occupy a small piece of land, and that the value of the building did not enter into the value of "the matter in dispute", the Judicial Committee held that the Supreme Court had applied the right test under Article 3 which was whether it was worth £500 to the appellant that the Rent Restrictions (Business Premises) Ordinance should be held to give him protection against an order to vacate the land leaving on it a building which cost £450 to erect.

The other case relied on by the petitioner is that of *Meghji Lakhamsi and Brothers v. Furniture Workshop*<sup>2</sup> also a decision of the Judicial Committee interpreting a similar article to be found in the Eastern African (Appeal to Privy Council) Order in Council, 1951. Lord Tucker, delivering the opinion of the Committee, stated that "on the true construction (of the Article) it is the value of the property, not the value of the claim or question, which is the determining factor". This was a case where leave to appeal had been sought by a landlord, and Their Lordships went on to say that "looked at from the angle of the landlords, the value of the property, vacant possession of which they were claiming, was correctly taken on a capital value basis". They did go on to say, however, that "it by no means necessarily follows that the result would have been the same if the tenants had been the appellants", and referred to certain decisions of the Court of Appeal for Eastern Africa which unfortunately are not available to us here for reference. Had there been no expression of opinion by the Privy Council on the point in question, I would myself have been inclined to favour the opinion that

<sup>1</sup> (1948) A. C. 1.

<sup>2</sup> (1954) A. C. 80.

it is the value of the claim or question and not the value of the property that is material. I must add that in support of his application the petitioner has put forward an affidavit in which he declares that the premises in suit are worth Rs. 35,000 and values his occupancy right at more than Rs. 5,000/-. The landlord who has had notice of the tendering of this affidavit has not attempted to contest by counter affidavit this declaration as to the value of the occupancy right. His counsel referred us to the decision of this Court in *Subbiah Pillai v. Fernando*,<sup>1</sup> where it was held that in an action between landlord and tenant, the right to possession of the premises in question must, for the purpose of valuing the matter in dispute in an application for conditional leave to appeal to the Privy Council, be valued at the rental reserved by the contract of tenancy. I feel bound to add that that case came to be decided without the complication we meet with here of the statutory protection afforded to a tenant by the Rent Restriction Act.

This application is said to be the first of its kind where a tenant of premises to which the Rent Restriction Act applies and which were occupied by him on a monthly tenancy at a rental which is below the value specified in Rule 1 (a) of the Schedule Rules is seeking leave to appeal to Her Majesty in Council against an order of ejection. My brother and I felt that, if the application is successful, it is reasonable to anticipate that there will be many more similar applications. That consideration combined with our view that the interpretation of the relevant limb of Rule 1 (a) is not free from doubt or difficulty led us to make, on January 5, 1961, a direction that this application be submitted to His Lordship, the Chief Justice, in terms of Section 51 of the Courts Ordinance to consider the assembling of a fuller Court to decide the question of law that arises here. The Registrar has since brought to our notice a minute made by His Lordship, the Chief Justice, on June 2, 1961 which indicates that he does not propose to exercise his powers under Section 51 in this instance as "there is neither a difference of opinion among the Judges who heard this case nor a conflict of decisions of the Supreme Court". It therefore becomes necessary that we should now deliver our order on the application for conditional leave as counsel have intimated that they have no further arguments to adduce.

We consider that in the state of the facts before us on the present application we should apply the decision in *Meghji Lakhamsi's Case* (*supra*) that it is the value of the property, not the value of the claim or question, which is the determining factor. Moreover, the petitioner claims leave under both limbs of Rule 1 (a), and his affidavit which declares that his right to occupation of the premises as a protected tenant is worth more than Rs. 5,000/- stands uncontradicted. In these circumstances I would grant the application on the usual conditions.

The petitioner is entitled to the costs of this application.

SINNETAMBY, J.—I agree.

*Application allowed.*

<sup>1</sup> (1950) 52 N. L. R. 217.